IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Jairama Ram & ors. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 463/2001
against the order dated 18-7-2001 passed
by the Sub-Divisional Magistrate, Deedwana,
in Criminal Case No. 10/2001.

...

Date of Order: August 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. C.R. Jakhar, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. M.K. Garg, for the non-petitioner No.2.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 18-7-2001 passed by the Sub-Divisional Magistrate, Deedwana, district Nagaur (for short, "the Executive Magistrate" hereinafter), whereby the Executive Magistrate attached the land bearing Khasra No. 1084/4 measuring 18 Bighas situate in village Dakipura, tehsil Deedwana under Section 146 of the Code.

I have heard learned counsel for the parties. Carefully gone through the order impugned.

It is contended by the learned counsel for the petitioners that without drawing a preliminary order under sub-section (1) of Section 145 of the Code, the Executive Magistrate passed the order under Section 146 of the Code, which is contrary to law.

On careful perusal of the order impugned, it is clear that the preliminary order under sub-section (1) of Section 145 of the Code has not been drawn by the Executive Magistrate. Even before attaching the land in question, the requirements of sub-section (1) of Section 146 of the Code have not been satisfied. The Executive Magistrate has not held that the case is of emergent nature and none of the parties was then in such possession of the land in dispute as if referred to in Section 145 of the Code. In the instant case, neither the compliance of requirements of Section 145 (1) nor of Section 146 (1) of the Code has been made, therefore, the impugned order cannot be sustained.

Consequently, the criminal miscellaneous petition is allowed. The order impugned dated 18-7-2001 passed by the Executive Magistrate in Criminal Case No. 10/2001 is set-aside. The stay petition stands disposed of.

(H. R. PANWAR), J.

mcs